

NOTE: The following is an Amended Draft response to a request for an advisory opinion prepared for consideration by the Citizen's Ethics Advisory Board. It does not necessarily constitute the views of the Board.

TO: Board Members

FROM: Barbara E. Housen, General Counsel

RE: RAO 4704

DATE: March 29, 2007

INTRODUCTION

The Citizen's Ethics Advisory Board (Board) issues this advisory opinion in response to a request from state Representative James A. Amann. In that request, Representative Amann asks if he can rely on a staff opinion, issued by a staff member of the former State Ethics Commission on April 4, 2005 (prior staff opinion), to guide his behavior with respect to his dual roles as a state legislator and fundraiser for the Greater Connecticut Chapter of the Multiple Sclerosis (MS) Society. No other member of the Connecticut General Assembly requested an opinion on the specific question addressed in this opinion.

RELEVANT FACTS

The following facts were presented by Representative Amann in his request, and are relevant to this opinion. Representative Amann is a State Representative in the Connecticut General Assembly and currently serves as Speaker of the House of Representatives (House). He also provides fundraising services to the MS Society as an independent contractor. His compensation from the MS Society is a fixed amount, unrelated to any fundraising goals. He does not receive bonuses or additional compensation related to the success of his fundraising efforts. He is not an officer, director or employee of the MS Society.

Representative Amann also stated in his request that "recently, my service in these dual roles has been the subject of public comment." Indeed, there has been widespread news media coverage reporting that in connection with Representative Amann's fundraising services for the MS Society, he solicits funds/sponsorships for events from lobbyists. For example, Representative Amann has acknowledged mailing invitations to lobbyists inviting them to purchase tickets to attend MS Society fundraising events. It is the opinion of the Board that the solicitation of funds from lobbyists is a fact that is relevant to the request and to this opinion.

The following facts, which were relevant to the April 4, 2005 former staff opinion, are also relevant to this opinion. The MS Society was holding a "gala benefit in

July [2005].” Representative Amann was employed by the MS Society at that time and wanted to know whether “soliciting sponsors” for the “gala benefit” violated the Code of Ethics for Public Officials, Chapter 10, Part I, General Statutes (Code of Ethics).

QUESTION

Representative Amann asks whether he can rely on the former staff opinion to guide his behavior with respect to his dual roles as a state legislator and fundraiser for the MS Society, and more specifically, whether soliciting sponsors is permissible, under the Code of Ethics.

ANALYSIS

Section 1-84 (c) of the Code of Ethics, in pertinent part, prohibits a public official from using his “public office or position” “to obtain financial gain for himself.”¹ “Lobbyist” as referenced in this opinion refers to both a “client lobbyist” as well as a “communicator lobbyist” as defined at General Statutes § 1-91(u) and (v), respectively.² In addition, the former state Ethics Commission determined that working as an “independent contractor” is considered “employment” for purposes of § 1-84 (c). Advisory Opinion No. 80-21.

The prior staff opinion did not specifically address § 1-84 (c), the provision that is the essence of this opinion. Neither did the prior staff opinion specifically address the solicitation of sponsorships from lobbyists, by Representative Amann, to raise funds for the MS Society, which compensates him. The prior staff opinion addressed “soliciting sponsors” generally, the fact that the MS Society is not a “business with which...[he is] associated,” and suggested that to avoid even a perceived conflict under the Code of Ethics, MS Society funds could be segregated so that funds raised by him are not the funds used “to support the administrative expenses of the Connecticut...MS Society where...[he is] employed.”

In the prior staff opinion, it was concluded that the MS Society is not “a business with which [Representative Amann is]...associated” as that term is defined in the Code of Ethics, and that: “unless...[he is] a compensated officer or director of...[the] MS Society, the mere fact that...[he is] an employee of [the] MS Society does not make that organization a 'business with which...[he is] associated'” for purposes of § 1-84 (c). The Board concurs with the conclusion that the MS Society is not “a business with which

¹ Section 1-84 (c) in relevant part provides that: “no public official or state employee shall use his public office or position...to obtain financial gain for *himself*, his spouse, child, child’s spouse, parent, brother or sister or a business with which he is associated.” [Emphasis added].

² “Client lobbyist” is defined at § 1-91(u) and means: “a lobbyist on behalf of whom lobbying takes place and who makes expenditures for lobbying and in furtherance of lobbying.” “Communicator lobbyist” is defined at § 1-91(v) and means: “a lobbyist who communicates directly or solicits others to communicate with an official or his staff in the legislative or executive branch of government or in a quasi-public agency for the purpose of influencing legislative or administrative action.”

...[Representative Amann is] associated,” within the definition of that term as set forth at § 1-79 (b).³

In addition, the prior staff opinion appears to have attempted to address the applicability of that portion of § 1-84 (c) that specifically prohibits the use of a public official’s office or position for such official’s own financial gain as opposed to the financial gain of a “business with which...[the public official] is associated.” The staff member of the former Ethics Commission stated in the prior opinion that “the Code of Ethics does not prohibit...[Representative Amann’s] solicitation of contributions to the...[MS] Society, provided that the money raised does not specifically benefit...[Representative Amann’s] position...[Representative Amann] indicated...that the funds raised by these solicitations will be used solely to support...[the MS Society] services and programs and not at all to support the administrative expenses of the Connecticut...[MS Society] where...[he is] employed. This restriction on the use of the solicited money should help to avoid even a perceived conflict of interest.” It is with this portion of the prior staff opinion that the Board also disagrees.

Such portion of the prior staff opinion suggests that if the MS Society money solicited by Representative Amann is somehow segregated so that only MS Society funds that he did not solicit are used to compensate him by the MS Society, then for purposes of the Code of Ethics he would not be deemed to have received “financial gain” for himself, and therefore, no violation of § 1-84 (c) would occur. In the Board’s view, the notion of segregating MS Society funds neatly into “funds solicited by [Representative Amann]” and “funds not solicited by [Representative Amann]” is not supported by the plain and unambiguous language of § 1-84 (c). It is a basic tenet of statutory construction that in seeking to ascertain the meaning of a statute we must first consider “the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered.” General Statutes § 1-2z.

Because the plain and unambiguous language of § 1-84 (c) expressly prohibits the use of a public official’s office or position to obtain [any] “financial gain” for *himself*, the prior opinion was unclear in suggesting that so long as MS funds are segregated, then there could be no violation of the Code of Ethics, within the meaning of §1-84 (c).

The Board concludes, therefore, that because Representative Amann receives “financial gain” (compensation) from the MS Society, the only other relevant inquiry for purposes of § 1-84 (c) under the facts of this situation is to determine whether he is using his “public office or position” to obtain such “financial gain.” The Board will now address that question.

³ “Business with which he is associated” is defined at § 1-79 (b) to include a business through which “business for profit or not for profit” is conducted and in which the public official is a “director, officer, owner, limited or general partner, beneficiary of a trust or holder of stock constituting five per cent or more of the total outstanding stock of any class.”

In the Board's view, there are two primary considerations in determining "use of office" in connection with soliciting lobbyists: first, whether there is coercion in the solicitation and, second, whether the lobbyists will receive preferential or disparate treatment if the solicited funds are given or not given.

In the Board's view, Representative Amann would be improperly using his office or position whenever by his actions he creates a situation that is coercive in the eyes of those solicited. In this case, the coercive situation created is that those who have business that is, or could be affected by Representative Amann's official actions, are expected, or at a minimum well-advised, to contribute to the MS Society that compensates him, in order to secure preferential access or favorable treatment. In the Board's view, solicitations directed at lobbyists are effective precisely because they are unavoidably and inherently coercive and tend to create an atmosphere of pressure. Because soliciting lobbyists is inherently coercive and creates an atmosphere of pressure, the Board believes that such solicitations would be an improper use of Representative Amann's public office and position, within the meaning of § 1-84 (c).

Also of specific relevance to this opinion is the fact that Representative Amann holds a position of significant power and authority. As Speaker, he presides over the House during its sessions, appoints House members of all committees not appointed by resolution, recognizes all persons wishing to address the House, puts all questions to vote, decides questions of order and refers bills to committees. See 2007 Legislative Guide. Because Representative Amann essentially directs the flow of legislative business in the House, he has the power to affect the interests of lobbyists. Solicitations from lobbyists to benefit the MS Society, which then compensates Representative Amann, blurs the line between when he is acting in his official capacity as legislator and Speaker, and when he is acting as private citizen Amann simply engaging in a philanthropic endeavor. Such blurring makes it impossible for those being solicited, to clearly determine whether he is using the power of his office to affect the solicitation process and the interests of lobbyists.

CONCLUSION

There is nothing in the Code of Ethics that prevents Representative Amann from engaging in outside employment. Indeed, the former state Ethics Commission routinely concluded that the great majority of legislators must, out of economic necessity, pursue outside employment while in state service. Furthermore, soliciting contributions for charitable purposes should be encouraged because both those doing the soliciting, and those contributing, are demonstrating good-citizen responsibility, and this opinion in no way should be construed to suggest that soliciting contributions for charitable purposes should be discouraged.

However, when financial gain (compensation) is involved, as is the case here, the Code of Ethics requires that there be no use of a public official's "public office or position" in obtaining such financial gain. Under the specific facts of Representative Amann's situation, the Board concludes that because of the clear prohibition contained in

§1-84 (c) that a public official cannot use his public office or position to obtain financial gain, it would be an inappropriate use of Representative Amann's public office (as a legislator) and his position (as Speaker) to solicit funds or sponsorships from lobbyists (both client and communicator) for the MS Society, which provides Representative Amann with financial gain. Accordingly, the Board further concludes that Representative Amann should not rely on the prior staff opinion to guide his behavior with respect to his dual roles of state legislator and fundraiser for the MS Society.

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